

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

<b>Illinois Bell Telephone Company</b>	:	
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<b>Petition to Determine Adjustments to UNE Loop Rates Pursuant to Section 13-408 of the Illinois Public Utilities Act.</b>	:	<b>03-0323</b>
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**Z-TEL COMMUNICATIONS, INC., COVAD COMMUNICATIONS COMPANY,  
TRUCOMM CORPORATION, DATA NET SYSTEMS, LLC, AND THE  
ILLINOIS PUBLIC TELECOMMUNICATIONS ASSOCIATION’S BRIEF ON  
EXCEPTIONS TO THE ADMINISTRATIVE LAW JUDGES' MAY 30, 2003  
PROPOSED ORDER**

COMES NOW Z-Tel Communications, Inc., Covad Communications Company, TruComm Corporation, Data Net Systems, LLC, and the Illinois Public Telecommunications Association (“the Interveners”), pursuant to 83 Ill. Admin. Part 200.830, and files this Brief on Exceptions to the ALJ’s May 30, 2003 Proposed Order.

The process by which the ALJ have tentatively adopted SBC’s adjusted UNE rates in the proposed order is fraught with error. The Interveners have explained in detail the inappropriate manner in which SBC calculated the rates adopted in the proposed Order, even with the modifications recommended by Staff. The record (what there is of it since the parties were prohibited from cross examining any SBC witnesses) clearly demonstrates that the rates adopted in the proposed Order do not comply with TELRIC principles, FCC orders, and a multitude of court decisions reviewing the federal Telecommunications Act. 47 U.S.C. § 252 and the FCC orders implementing its terms establish the framework upon which this Commission must review and approve the cost of providing UNEs.

Further, the proposed Order adopts rates despite the utter failure of the Commission to hold evidentiary hearings to determine whether the rates are just, reasonable and nondiscriminatory as required by the Illinois Public Utilities Act. *See*, 220 ILCS 5/9-250, 5/13-504(a). Notwithstanding, the parties to this proceeding are specifically, and over their objections, forbidden from conducting discovery and to have the opportunity to cross-examine SBC witnesses. The proposed Order ignores these requirements and adopts new UNE rates. Such a determination is not only a violation of the requirements of the Act, but also a violation of the Interveners due process rights.

**I. The Proposed Order Adopts Rates in Violation of the Federal Telecommunications Act and FCC Orders Implementing its Terms.**

As the Interveners explained in their Initial Comments, the Commission is compelled by federal law to base the rates for network elements on the forward looking economic costs SBC incurs in making those network elements available to the CLECs. *See*, Initial Comments at pp. 7-8. In order to investigate the propriety of forward looking costs, the Commission must review hundreds of inputs and assumptions that derive the costs of providing the network elements, the value of which will impact the costs up or down. Despite this requirement, the record amply demonstrates that SBC has failed to provide any analysis of the impact of these various inputs and assumptions on either the rates proposed by SBC or the ones ultimately adopted in the proposed Order. Notwithstanding, the proposed Order adopts rates that are impacted by these various inputs and assumptions. Intervener witness Starkey indicated that there were hundreds if not thousands of inputs which the Commission needs to investigate before the ICC can determine whether the proposed rates comply with TELRIC, and provided a list of no

less than thirteen (13) cost inputs and assumptions which the proposed Order fails to adjudicate. Such a failure is in direct contrast with the FCC's pricing requirements. Mr. Starkey also provided evidence that certain of these inputs and assumptions varied by as much as 200% from the Commission approved levels in ICC Docket 96-0486!

The Interveners also pointed out that the burden is placed on SBC to prove, by a preponderance of the evidence, the validity and factual bases for each of the underlying assumptions in its cost studies. However, the record is void of any support for any of the hundreds of inputs and assumptions used in the rates adopted in the proposed order. In fact, the record is void of the actual cost study used to derive the rates adopted in the proposed Order in direct violation of the FCC regulations and judicial precedence. *See, Illinois Bell Telephone Company v ICC*, 254 F.Supp.2d 900, 908 (N.D. IL 2003); 47 C.F.R. 51.505(c).

## **II. The Proposed Order's Adoption of Rates is a Violation of the Interveners' Due Process Rights.**

The Interveners also demonstrated that the adoption of any rates in this proceeding violate the due process rights of the Interveners and, as such, forced the Commission to dismiss the proceeding or provide the Interveners with the opportunity to cross examine SBC witnesses and conduct discovery on the cost studies and affidavits.

The proposed Order adopts rates despite the utter failure of the Commission to hold evidentiary hearings to determine whether the rates are just, reasonable and nondiscriminatory as required by the Illinois Public Utilities Act. *See*, 220 ILCS 5/9-250, 5/13-504(a). The proposed Order ignores these requirements and adopts new UNE rates.

Such a determination is not only a violation of the requirements of the Act, but also a violation of the Interveners due process rights.

Z-Tel and Covad both filed an Objection with the Commission raising these points.<sup>1</sup> The proposed Order, however, does not address those objections. In fact, the only discussion related to those objections is the summary of SBC's position with respect to the Emergency Continuance Motion. The Proposed Order reads as follows:

SBC notes that none of these parties offered an alternative schedule to the ALJs or the Commission that would have allowed additional time for discovery, cross-examination or hearings, much less one that would have concluded within 30 days.

Proposed Order, p. 12. The Interveners note that they did, in fact, set the framework for a schedule in its Emergency Continuance Motion. The Interveners requested in their Emergency Continuance Motion that the Commission establish a schedule that would set the dates for filing briefs after the depositions are completed. While the framework does not set certain dates for filing briefs, it does establish the appropriate framework that would have allowed the Interveners to conduct discovery and cross examination, while still allowing the proceeding to continue. The bottom line, however, is that the Emergency Motion was denied and the Interveners rights were infringed upon.

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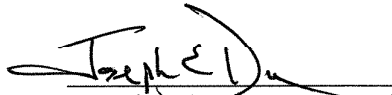
<sup>1</sup> See, Z-Tel Communications, Inc and Covad Communications Company's Emergency Motion for Continuance of Briefing Schedule, and Request the SBC Produce Witnesses for Deposition on Less than Fourteen Days Notice, filed on May 19, 2003.

WHEREFORE, the Interveners recommend that the attached proposed exceptions to the proposed Order be adopted.

June 3, 2003

Respectfully submitted,

Z-Tel Communications, Inc., Data Net  
Systems, LLC, TruComm Corporation,  
Covad Communications Company the  
Illinois Public Telecommunications  
Association



Joseph E. Donovan, one of their attorneys

Thomas Koutsky  
Vice President, Law and Public Policy  
Z-Tel Communications, Inc.  
1200 19<sup>th</sup> St., N.W., Suite 500  
Washington, DC 20036  
(202) 955-9652

*Counsel for Z-Tel Communications*

William Cobb III  
Senior Counsel  
Covad Communications Company  
100 Congress Avenue, Suite 2000  
Austin, Texas 78701

*Counsel for Covad*

Michael W. Ward  
General Counsel  
Data Net Systems, LLC and  
TruComm Corporation  
1608 Barclay Boulevard  
Buffalo Grove, Illinois 60098  
(847) 243-3100  
*Counsel for TruComm Data Net and IPTA*

Henry T. Kelly  
Joseph E. Donovan  
O'Keefe, Ashenden, Lyons and Ward  
30 N. LaSalle St., Suite 4100  
Chicago, Illinois 60602  
312-621-0400  
*Counsel for all Plaintiffs*

## **EXCEPTION NO. 1.**

The only manner in which the Commission can address the serious violations of federal law and Illinois Public Utilities Act is to enter an order denying SBC's petition and dismissing this proceeding. In compliance with 83 Ill. Admin. 200.830, the Interveners proposed the following changes to the proposed Order:

1. Delete the Commission's Analysis and Conclusions and the Findings and

Ordering Paragraphs sections (Pages 12-17) and insert the following:

### **Commission Analysis and Conclusion**

Having reviewed and considered the arguments of the parties, we agree with the Interveners and find that the Petition should be denied and the proceeding dismissed. It is clear that SBC has failed to provide this Commission with any cost studies or other support for its proposed rates. SBC is required under federal law to provide this Commission with cost studies to support its proposed rates. *Illinois Bell Telephone Company v ICC*, 254 F.Supp.2d 900, 908 (N.D. IL 2003); 47 C.F.R. 51.505(c). The record, however, is void of any evidence that would serve as adequate cost studies to support the rates proposed in this proceeding.

The schedule also prohibits the Commission from conducting evidentiary hearings related to the Petition, which is required in the Illinois Public Utilities Act. *See*, 220 ILCS 5/9-250, 5/13-504(a). Clearly, we would be hard pressed to explain to the rate paying citizens of the State of Illinois our disregard for the clear requirements of the Illinois Public Utilities Act. As the Interveners have amply demonstrated, the Petition at issue herein involves literally hundreds of cost inputs and assumptions. For the Commission to adopt rates impacted by these cost inputs and assumptions without giving the opportunity to conduct evidentiary hearings would be, at the least, a shirking of our statutory duties.

While Section 200.525 of this Commission's Rules of Practice grants us the authority to waive evidentiary hearings, not all of the parties have acquiesced to paper proceedings in this proceeding. As such, the waiver available under Section 200.525 of our Rules of Practice is not applicable.

### **Findings and Ordering Paragraphs**

The Commission, having considered the entire record herein and being fully advised in the premises, is of the opinion and finds that:

- (1) Illinois Bell Telephone Company is an Illinois corporation engaged in the business of providing telecommunications services to the public in the State of Illinois and, as such, is a telecommunications carrier within the meaning of Section 13-202 of the Illinois Public Utilities Act;
- (2) the Commission has jurisdiction over Illinois Bell Telephone Company and the subject matter of this proceeding;
- (3) the recital of facts and law and conclusions reach in the prefatory portion of this Order are supported by the record, and are hereby adopted as findings of fact and conclusions of law for purposes of this Order;
- (4) the SBC petition at issue in this proceeding is denied;
- (5) this matter is dismissed with prejudice.

IT IS THEREFORE ORDERED that the SBC petition at issue in this proceeding is denied.

IT IS FURTHER ORDERED that this matter is dismissed with prejudice.

IT IS FURTHER ORDERED that subject to the provisions of Section 10-113 of the Public Utilities Act and 83 Ill. Adm. Code 200.880, this Order is final; it is not subject to the Administrative Review Law.